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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96–98
Inter–Carrier Compensation for ISP–Bound Traffic	CC Docket No. 99–68

COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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April 12, 1999

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Summary

In these Comments, GSA addresses issues concerning inter–carrier compensation for traffic bound to Internet service providers ("ISPs"). The compensation procedures for this traffic will determine the costs, and ultimately the availability, of services that allow government agencies, businesses, and individuals to communicate and obtain information through a worldwide network of interconnected computers.

GSA's primary recommendation concerning inter–carrier compensation is that traffic bound to ISPs should not be subject to additional access charges. Under rules issued by the Commission years ago, ISPs pay for access through subscriber line charges ("SLCs") at the maximum rate applicable to any group of end users. Indeed, the question of whether ISPs should be subject to the access charges applicable to common carriers has been considered in numerous proceedings over the past 15 years. The conclusion remains unchanged — the exemption in the Commission's rules should be continued, and no additional access charges should be levied for traffic to the Internet.

Although most traffic to ISPs is jurisdictionally interstate, GSA recommends that inter–carrier compensation be governed by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Telecommunications Act. Thus, the provisions in state–approved interconnection agreements explicitly or implicitly encompassing ISP–bound traffic should continue in effect. However, if there is a question as to whether an existing interconnection agreement encompasses ISP–bound traffic, carriers should negotiate a revised agreement under the auspices of state regulators, who would intervene if parties cannot concur.

Finally, although the details of inter–carrier compensation should be set in state–by–state negotiations, GSA urges the Commission to issue guidelines concerning rate structure and cost issues for inter–carrier compensation plans. National guidelines should help ensure that compensation plans do not contain features that inhibit competition for Internet services.

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The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Commission's Declaratory Ruling and Notice of Proposed Rulemaking ("Declaratory Ruling and Notice") released on February 26, 1999. The Declaratory Ruling and Notice discusses issues concerning charges for traffic delivered to firms providing information services, particularly Internet service providers ("ISPs"). The Internet provides government agencies, businesses, and individuals with the ability to communicate and obtain on–line information through an international network of interconnected computers.[1]

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the

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1 Declaratory Ruling and Notice, para. 3.

responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. The FEAs require a wide array of interexchange and local telecommunications services throughout the nation. From their perspective as end users, the FEAs have consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

Within the past year, GSA has submitted comments and replies in three proceedings initiated by the Commission to address issues concerning advanced telecommunications services.[2] Advanced services are vital to Federal agencies in performing their functions because they provide a means for employees to communicate with each other, to access data available from outside sources, and to communicate efficiently with the public. From this perspective, GSA urges the Commission to take the steps necessary to ensure that the Internet will continue to offer a platform for access to an expanding array of information and services.

As discussed in the Declaratory Ruling and Notice, the objective of this proceeding is to obtain comments for the Commission to use in formulating rules for inter–carrier compensation of traffic bound to ISPs. Issues concerning the structure of inter–carrier compensation have a direct impact on ISPs and telecommunications carriers, but these issues are also vital to end users because their resolution will determine the costs and availability of advanced telecommunications services throughout the nation.

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2 In the Matter of *Computer III* Further Remand Proceedings – Bell Operating Company Provision of Enhanced Services, CC Docket No. 95–20, Comments of GSA, March 26, 1998 and Reply Comments of GSA, April 23, 1998; In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Comments of GSA, September 14, 1998 and Reply Comments of GSA, October 8, 1998; and In the Matter of Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98–147, Comments of GSA, September 25, 1998 and Reply Comments of GSA, October 16, 1998.

II. TRAFFIC BOUND TO INTERNET SERVICE PROVIDERS IS JURISDICTIONALLY MIXED.

In the circuit–switched network employed for traditional voice and data communications, a call originating and terminating in the same state is jurisdictionally "intrastate," while a call originating in one state and terminating in another state (or country) is jurisdictionally "interstate."[3] However, the distinction between interstate and intrastate traffic is less clear for Internet traffic, because these communications, which traverse a packet–switched network, do not have unique "termination" points.[4]

The Internet functions by splitting up messages into "small chunks or packets" that are individually routed to their destination. Different packets comprising the same message may travel over different physical paths, allowing callers to invoke multiple Internet services simultaneously, and also permitting callers to access information with no knowledge of the physical location of the service where the information resides.[5] Thus, in a single Internet communication, a user may access websites that reside on servers in various states or countries, or "chat on–line" with a group of users who are geographically dispersed among many locations.[6] Indeed, even the contents of a single website may be stored on multiple servers, some located in the caller's home state, and some in entirely different parts of the nation.[7]

Although the great majority of Internet calls involve terminals in multiple states, it is impractical of not impossible to isolate the few messages that are confined within the boundaries of a single jurisdiction. Thus, the Commission concludes in its Declaratory

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3 Declaratory Ruling and Notice, para. 18.

4 *Id.*

5 *Universal Service Report to Congress*, 13 FCC Rcd at 11531, 11532.

6 *Id.*

7 *Id.*

Ruling and Notice that ISP–bound traffic is "jurisdictionally mixed."[8] Starting from this premise, the Declaratory Ruling and Notice basically presents parties with three tentative conclusions for analysis and comment.

- Although most ISP–bound traffic is interstate, it should not be subject to additional access charges.[9]
- Since there are no Commission rules governing inter–carrier compensation for ISP–bound traffic, the provisions in state–approved interconnection agreements considering this traffic as "local" should remain in effect.[10]
- Since the Commission retains shared jurisdiction, it may establish a broad set of rules governing inter–carrier compensation that parties would be required to follow in deliberations concerning the rates, terms and conditions for ISP–bound traffic.[11]

GSA concurs with all three of these conclusions because these policies will provide a pro–competitive framework for development of advanced telecommunications services.

III. INFORMATION SERVICE PROVIDERS SHOULD NOT BE SUBJECT TO ADDITIONAL ACCESS CHARGES.

A. The Commission should not rescind the exemption from access charges granted to enhanced service providers.

In its *Computer II* decision well before AT&T divestiture required an access charge system, the Commission sharply contrasted communications with data processing capabilities by distinguishing "basic" from "enhanced" services.[12] The

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8 *Id.*, para. 19

9 *Id.*, para. 20.

10 *Id.*, para. 21.

11 *Id.*, para. 31.

12 *Final Decision*, 77 FCC 2d 384 (1980), *Memorandum Opinion & Order*, 84 FCC 2d 50, *further reconsideration* 88 FCC 2d 512 (1981) *aff'd*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

Commission defined basic service as providing "a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information."[13] Thus, interexchange carriers provide basic telecommunications services, which are regulated under Title II of the Communications Act of 1934.

In contrast, enhanced services are provided over common carrier facilities that "employ computer processing applications that act on the format, content, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information."[14] Enhanced services are not regulated under Title II of the Communications Act.[15]

With the rapid growth on the Internet, ISPs have become the principal providers of enhanced services. However, just as "enhanced" services were not properly considered as "basic" services, ISPs are not common carriers because they do not offer transmission capability to their customers. Information service providers meet the Commission's definition of firms providing enhanced services because they use computers to act on the format and content of information and instructions provided by their own end users and provide their customers with additional or restructured information in an interactive format.

In 1983, the Commission implemented the system of interstate access charges to compensate local exchange carriers for (1) originating and terminating messages transmitted by interexchange carriers, and (2) providing the originating and

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13 693 F.2d at 205 n. 18.

14 *Id.*

15 47 C.F.R. § 64.702(a).

terminating end links for interexchange private lines.[16] At the same time, the Commission acknowledged that enhanced service providers, including ISPs, employ interstate access services.[17] Nevertheless, the Commission exempted enhanced service providers from the access charges assessed on interexchange carriers and ruled that these firms would be considered as end users for that purpose.[18]

About five years later, the Commission revisited the issue of access charges for enhanced services providers in a proceeding to consider the need for amendments to Part 69 of its rules. In the ensuing *ESP Exemption Order*, the Commission again ruled that enhanced services providers should be considered to be end users.[19]

About eight years subsequently, the Telecommunications Act of 1996 opened the local exchange markets to competition, established new duties and responsibilities for the incumbent LECs, and provided LECs with new opportunities to participate in the rapidly developing telecommunications markets.[20] Soon after this legislation was passed, the Commission initiated a proceeding to investigate the need for modifications in the system of access charges for the LECs under price cap regulation. In those proceedings, the Commission substantially revised the system of interstate access changes applicable to price cap carriers, and made the system conform more closely with underlying cost relationships. Nevertheless, while instituting these important changes, the Commission maintained the procedures applicable to all

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16 In the Matter of MTS and WATS Market Structure, CC Docket No. 78–72, Memorandum Opinion and Order, 97 FCC 2d 682, 711 (1983).

17 *Id.*

18 *Id.* at 715.

19 In the Matter of Amendments to Part 69 of the Commission's Rules relating to Enhanced Service Providers, CC Docket No. 87–215, Order, 3 FCC Rcd 2631, 2635 (1988) ("*ESP Exemption Order*").

20 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, amending the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

enhanced service providers by deciding again in the *Access Charge Reform Order* to maintain the "existing pricing structure pursuant to which enhanced service providers are treated as end users for the purpose of applying access charges."[21]

In 1998, the U.S. Court of Appeals for the Eighth Circuit affirmed the *Access Charge Reform Order.* Specifically, the court found that the Commission's decision to exempt ISPs from the application of interstate access charges other than subscriber line charges paid by end users (1) was consistent with precedent; (2) did not unreasonably discriminate in favor of ISPs; (3) did not constitute an unlawful abdication of the Commission's authority in favor of states; and (4) did not deprive incumbent carriers of their ability to recover relevant costs.[22]

In short, the question of whether ISPs should be subject to the system of access charges applicable to common carriers has been evaluated and reviewed for more than 15 years. The underlying facts and conditions are the same, so the conclusion remains unchanged as well — the exemption should be continued so that no additional access charges are levied for traffic bound to ISPs.

B. Information service providers pay access charges as end users of interstate telecommunications services.

Under the existing rules, enhanced service providers, including ISPs, are meeting their proportionate obligations to cover the costs of interstate access. These firms — like all other telecommunications users — have consistently paid for access to the public switched network through monthly subscriber line charges ("SLCs") on the facilities they obtain from the local exchange carriers ("LECs").

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21 Declaratory Ruling and Notice, para. 5, n. 9, citing In the Matter of Access Charge Reform, *Access Charge Reform Order*, 12 FCC Rcd 16133–34.

22 Declaratory Ruling and Notice, para. 5, n. 15, citing Southwestern Bell Telephone Co., v. FCC, 153 F3d 5223, 542 (8th Cir. 1998).

As discussed in the Declaratory Ruling and Notice, all enhanced service providers, including ISPs, are treated as end users in assessing obligations for interstate access charges.[23] Thus, the Commission permits these firms to obtain their links to the public switched network through intrastate local exchange tariffs, rather than interstate access tariffs.[24] Under this arrangement, the ISPs pay business local exchange service rates and the associated SLCs for any switched access connections to LEC central offices.

In a study submitted to the Commission in 1997, a group of ISPs described the access arrangements that they employ.[25] The ISPs explained that they are connected to the LECs' switches through the same types of dedicated access facilities that are employed by many other large business end users. In most cases, access is through DS–1 capacity (1.544 Mbps) facilities that provide twenty-four 64 kbps channels over a fiber optic cable or multiple copper pairs.

As a consortium of ISPs noted in its comments to the Commission, various types of rate plans are used by local exchange carriers to recover the costs of the access facilities.[26] For example, an ISP may lease 24 lines at the rates applicable to digital trunk groups or at the rates specified for an Integrated Switched Digital Network ("ISDN") primary rate interface.

In all cases, the Commission's access charge rules require application of the interstate SLC to <u>each</u> access channel. As for any other business end user, an ISP deriving multiple channels from a DS–1 is required to pay the full interstate SLC for

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23 Declaratory Ruling and Notice, para. 5.

24 *ESP Exemption Order*, 2635 n.8, 2637 n.53.

25 In the Matter of Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98–147 *et al.*, "The Effect of Internet Use on the Nation's Telephone Network," study accompanying filing of Internet Access Coalition, January 22, 1997, pp. 13–15.

26 *Id.*

each transmission path. At the end of 1998, the per–line SLC for multi–line business customers of price cap carriers averaged $7.11 a month, more than two times the $3.50 average monthly charge for primary residence and single business lines, and 40 percent above the $4.99 average monthly charge for non–primary residence lines.[27] Indeed, ISPs are already paying more than their share, and they should not be subject to additional access charge obligations.

C. Additional access charges would increase costs to consumers and reduce the benefits that the nation receives from information services.

Hundreds of ISPs compete with each other in offering consumers diversity and choice in their Internet services. This competition has been characterized by reasonable pricing levels, and the fact that consumers can access the Internet on a dial–up basis using the existing telephone network. The intense competition has lead to the explosive growth of Internet services. To continue this growth, it is important that the Commission continue to forbear from application of traffic–sensitive access charges, or the Presubscribed Interexchange Carrier Charge ("PICC"), which is assuming a major share of the cost responsibility for the services that LECs provide to the IXCs.

In the next stage of Internet development, a greater number of consumers will insist on increased access bandwidth, which requires dedicated broadband connections to the Internet. Thus, it is also important for the Commission to continue to forbear from application of all elements of the charge structure applicable to special access services provided to IXCs.

Usage–sensitive access charges could have a major impact on the costs of Internet services to consumers. The impact in each instance would depend on

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27 Monitoring Report Prepared by the Federal and State Staff for the Federal–State Joint Board, December 1998, Table 7.14.

consumer use, the access configuration, and the charge structure adopted, but the potential increase in the cost of Internet services is significant for both residence and business users.

Many ISPs offer unlimited Internet access over a "narrow band" telephone line for about $20 monthly. Although most businesses connect to the Internet through dedicated broadband access facilities, rather than dial–up connections, the equivalent monthly cost is about the same. For example, an ISP typically charges a business user about $600 per month for T-1 access, which is $25 per month for each of 24 "voice grade" connections. The present monthly charges of $20 to $25, which exclude fees for the access facilities themselves, could more than double if per–minute access charges were applied.

In the last half of 1998, the average interstate access charge was 3.82 cents per conversation minute.[28] With an Internet connection time of only two hours per week, this average charge equates to about $20 per month. Thus, application of this average per–minute charge could double the cost of Internet service for residence and business users with moderate connection times.

In modifying the access charge structure for LECs under price cap regulation, the Commission recognized that most of the costs of access to the switched network are fixed and do not depend on traffic volumes. The ISPs now pay the interstate SLCs, which have this cost–based structure. GSA urges the Commission to make no changes in the level or structure of access charges for these users.

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28 *Id.*, Table 7.13.

IV. INTER–CARRIER COMPENSATION FOR ISP–BOUND TRAFFIC SHOULD BE GOVERNED BY PREVIOUSLY NEGOTIATED INTERCONNECTION AGREEMENTS.

In the Declaratory Ruling and Notice, the Commission poses the tentative conclusion that, as a matter of policy, inter–carrier compensation for ISP–bound traffic should be governed by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Telecommunications Act.[29] GSA concurs with this conclusion. In short, since the Commission has not issued rules specifying inter–carrier compensation, the provisions in state–approved interconnection agreements explicitly or implicitly considering this traffic as "local" should continue in effect.

GSA agrees with the observation in the Declaratory Ruling and Notice that a negotiation driven by market forces is more likely to lead to efficient results than rates set by regulation.[30] Also, rates determined by such negotiations should more nearly reflect local costs, patterns of use, and commercial relations.

Apparently, in some instances, agreements between incumbent and competitive LECs specifically address ISP–bound traffic.[31] These agreements should continue in effect according to their terms.

On the other hand, if there is some question or dispute as to whether an existing interconnection agreement encompasses ISP–bound traffic, a revised agreement should be developed through negotiation under the auspices of state regulatory authorities. As with other issues on which parties petition state commissions for arbitration under section 252, if the state regulatory body fails to act, the Commission should assume that responsibility within 90 days of being notified of such failure.

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29 Declaratory Ruling and Notice, para. 30.

30 *Id.*, para. 29.

31 *Id.*

V. THE COMMISSION SHOULD ISSUE GUIDELINES GOVERNING INTER–CARRIER COMPENSATION FOR ISP–BOUND TRAFFIC.

In the Declaratory Ruling and Notice, the Commission concludes that since most ISP–bound traffic is interstate, it has authority to adopt a set of national rules concerning inter–carrier compensation for this traffic.[32] Therefore, as an "alternative" to state–by–state negotiations, the Commission suggests that it could issue rules concerning negotiation of the rates, terms, and conditions applicable to delivery of ISP–bound traffic.[33] Indeed, the Commission states that it might establish a national arbitration process that would be final and binding, and not even subject to judicial review.[34] The Commission requests comments on these procedures.[35]

GSA concurs with the conclusion that the Commission has authority to prescribe national rules concerning inter–carrier compensation for ISP–bound traffic. Moreover, GSA recognizes that administrative cost savings would accrue from a national arbitration framework. Additional advantages include the fact that geographically dispersed carriers would be better able to anticipate the level of interconnection expenses in newly–served regions. However, GSA believes that these benefits do not fully outweigh the advantages of state arbitrations in addressing matters concerning rate and cost structures and competition that are unique to each area.

To preserve the benefits on both sides of this issue, GSA recommends that the Commission issue broad guidelines governing inter–carrier compensation for ISP–bound traffic. The guidelines for inter-carrier compensation should cover at least two

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32 *Id.*, para. 31.

33 *Id.*

34 *Id.*, para. 32.

35 *Id.*, paras. 31–32.

important subjects — the structure of inter–carrier charges, and the appropriate cost basis for these charges. The guidelines should be structured to ensure that compensation plans for ISP–bound traffic do not contain features that could inhibit competition for Internet services. Although the guidelines should foster rational rate structures, they should provide flexibility for negotiation of the specific rates, terms, and conditions best meeting local requirements.

In the Declaratory Ruling and Notice, the Commission acknowledges that, regardless of the payment arrangement, LECs incur a cost when delivering traffic to an ISP that originates its traffic on another LEC's network.[36] Economically efficient inter–carrier compensation plans should reflect the structure of the underlying costs as nearly as possible. On this point, the Declaratory Ruling and Notice states:

> In particular, pure minute–of–use pricing structures are not likely to reflect accurately how costs are incurred for delivery of ISP–bound traffic. For example, flat–rated pricing based on capacity may be more cost–based. Parties also might reasonably agree to rates that include a separate call set–up charge, coupled with very low per–minute rates.[37]

As for all interconnection services, a flat charge is most suitable for recovering the costs of dedicated facilities used for inter–carrier connections because it ensures that the user will pay the full cost of the facility and no more.

Usage sensitive rates should not be employed to recover the costs of resources that do not vary significantly with traffic volumes. Use of traffic–sensitive rate structures to recover costs that are significantly less variable will impair development of additional Internet services and lead to higher costs for all users. Therefore, one of the most important objectives of national guidelines is to specify that inter–carrier

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36 *Id.*, para. 29.

37 *Id.*

compensation agreements should require that inter–carrier compensation plans reflect the structure of the costs incurred to provide services.

In addition to requiring rate structures that match costs, the guidelines should also address the nature of the costs to be employed as the standard in setting rates. The Commission has stated that Total Element Long Run Incremental Costs ("TELRIC") are the appropriate measure for interconnection services, and neither the Eighth Circuit court nor the U.S. Supreme Court modified this requirement.[38] TELRIC are the appropriate costs because they (1) simulate the prices that would prevail in a competitive market; (2) prevent incumbent LECs from exploiting their market power at the expense of competitive LECs; and (3) create the correct investment incentives for provision of any additional resources that are required. To accomplish these aims, costs should be based on the most efficient network architecture, sizing, technology and operating structure that are feasible and available in the industry. Although the Commission has enunciated these requirements in setting standards for interconnection services and UNEs, the pricing guidelines for inter-carrier compensation for ISP–bound traffic should reiterate them to ensure that they are applied to this important component of telecommunications services.

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38 *AT&T v. Iowa Utils. Bd.* __U.S.__, 119 S. Ct. 721, 734–36 (1999).

VI. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 12th day of April, 1999, by hand delivery or postage paid to the following parties.

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